

  
PRIVATE CLIENT  
GLOBAL ELITE

# THE MONTH

OCTOBER 2022

REPUTATION



**The Month is a monthly magazine with key takeaways and content driven by our Private Client Global Elite community.**

We welcome ideas and contributions from members of our Global Elite Membership group. If you are interested to contribute please contact **Francesca Ffiske** ([fffiske@alm.com](mailto:fffiske@alm.com))

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# NOTE FROM THE EDITOR



Working with privately wealthy individuals, whether business men and women, television or music personalities, sports stars, entertainers or public figures, will always have an element of considering unwanted attention and publicity. As trusted advisors, it is important that international private wealth experts have the resources to preserve their clients' reputation where possible, and step in when something goes wrong.

In this edition we will be hearing from a few experts in the field who will share their top tips and matters for consideration in the area of reputation.

First, we will hear from Polly Wilkins from Kobre & Kim who discusses '**stopping the snowball effect.**' As she states in her article, 'Reputation is currency, and it is critical to success. A good name creates opportunities; a bad name restricts them.'

Next, we will hone in on how the digital world has altered how we must think about our client's reputations with Allan Dunlavy, who

Looks at **Reputation in an online world – and why digital resilience is key.** He shares a case study Schillings dealt with with regard to a smear campaign, and what they did next.

Michael Giraud then takes a slightly different approach to show us his perspective from an offshore trustee standpoint in **Brand and Reputation, an offshore trustee's perspective.**

Finally, last but not least, Hannah Gornall gives us a really engaging article on **Blurring the Lines between Fact and Fiction ("Faction"): Reputation in the Era of the TV Drama**, where she touches on TV Shows like The Crown and how their popularity is creating an explosion in reputation and defamation cases.

We hope you enjoy this edition, we cannot wait to see you next month at one of our events - whether in Singapore, Como or Marrakesh!

**Francesca Ffiske**, Global Director, Private Client,  
Private Client Global Elite

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**37-8 November, Capella, Sentosa**

**Private Client Exchange Asia**

Chaired by Nicholas Jacob (Forsters) and Vikna Rajah QC (Rajah & Tann Singapore)

**17-19 November, Villa d'Este, Lake Como**

**International Private Client Forum**

Chaired by Basil Zirinis (Sullivan & Cromwell) and Clare Maurice (Maurice Turnor Gardner)

**30 November - 2 December, La Mamounia, Marrakech**

**Trusts & Estates Litigation Forum. International**

Chaired by Tina Wüstemann (Bär & Karrer), Dakis Hagen QC (Serle Court) and Nicholas Holland (McDermott Will & Emery)

**26 January 2023, London**

**Private Client Global Elite Celebratory Dinner**

**12-14 February, Banyan Tree Mayakoba, Mexico**

**Private Client Forum Americas**

**23-24 February 2023, Switzerland**

**Private Client Exchange Switzerland**

Chaired by Tina Wüstemann (Bär & Karrer) and Werner Jahnel (LALIVE)

**9 March 2023, London**

**International Women's Day Luncheon**

**The full Private Client Global Elite 2023 calendar will be launched in September.**

# PROTECTING REPUTATION: STOPPING THE SNOWBALL EFFECT

Polly Wilkins, Kobre & Kim

Reputation is currency, and it is critical to success. A good name creates opportunities; a bad name restricts them. Ultra-high net worth individuals and their families often live their lives under public scrutiny, whether by design or otherwise. To preserve and enhance their global interests, their reputations must be safeguarded. However, reputation is a highly sensitive asset, and difficult to control. That sensitivity is precisely what makes reputations such a target for commercial competitors and political opponents.

Take, as a hypothetical example, a client that is competing for valuable mining rights from a foreign state. Their opponent, seeking to undermine their bid, contrives a story about the client's alleged involvement in a money laundering scheme. That story gathers pace and results in political pressure, such that it would be problematic for the state to be seen granting lucrative contracts to the client.

The bid is unsuccessful and the valuable mining opportunity is lost. Then, the allegations are picked up in a due diligence report and the client is informed their bank is terminating their relationship as a result – opening new accounts with other banks means the client must pass enhanced due diligence checks, which will now be problematic for the same reason. Suddenly, their family office, the trustees and other professional advisors are coming under pressure for associating with the family. Worse still, the story triggers investigations by the authorities, and that may result in the client's worldwide assets being frozen pending the outcome of that investigation. The client is also concerned that an Interpol Red Notice may be in the works, and they cannot travel for fear of arrest.

This is an extreme example, but it illustrates how well-crafted, strategically placed narratives, aimed at undermining an individual's commercial or political objectives, can snowball on an

increasingly problematic scale. For ultra-high net worth individuals, these often take the form of a multi-jurisdictional issue that can impact upon many aspects of their personal life and business operations.

Take, for example, the recent case of *Raffaele Mincione v Rizzoli Corriere Della Sera Media Group SPA* [2022] EWHC 2128 (QB) where a lucrative real estate transaction involving a private equity firm resulted in a disgruntled counterparty targeting the firm's founder with criminal investigations in Italy, a seemingly aggressive media campaign against him, and proceedings in Switzerland where approximately EUR 60 million of his assets were frozen. While the founder ultimately received compensation from a publisher for the defamation claim he brought to defend one of the attacks on his reputation, the case illustrates the multifaceted damage a reputational attack can give rise to arising out of a single commercial

deal.

An important takeaway from these examples is that a global, forward-thinking approach is key to counter attacks on reputation from commercial or political opponents:

1. Global coordination of local strategies.

Reputational threats to high net worth individuals are rarely confined to one jurisdiction. As soon as a potential threat to an individual's reputation arises, the legal team should formulate a cross-jurisdictional strategy that takes account of the individual's broader strategic goals and their areas of potential vulnerability. As the examples above illustrate, the potential damage arising from a reputational threat can take various forms and it is essential that the client benefits from the appropriate expertise of specialists in relevant local jurisdictions, be that on private client, tax, property or criminal matters.


2. A targeted approach. On the basis of that strategy, and in close consultation with relevant local specialists, the team can then put together a carefully prepared factual and legal narrative, and communicate to select targets through a variety of mediums to ensure that, to the extent any story must be shared about the client, they do not become the central character, negative allegations are diluted, and it does not undermine the client's core objectives.

3. A forward-focused strategy. Equally important, the strategy should anticipate future risks: the knock-on effects of the allegations need to be considered, and the legal team should undertake a vulnerability assessment of litigation risks relating to their assets, as well as the potential impact on the individual's commercial footprint and on other key stakeholders. To the extent relevant, the team should also devise a counter-strategy, anticipating their opponent's next steps.

To summarise, when individuals are faced with high-stakes situations where their reputations - and, as a result, their commercial interests - are in danger, it is essential that they and their circle of advisors are capable of foreseeing and defending against the highest risk scenarios from all-encompassing, global angles, including: reputation management, asset protection and criminal defence. By taking these

steps, individuals facing such attacks will ensure that their interests are comprehensively safeguarded on an international scale. ■





# REPUTATION IN AN ONLINE WORLD – AND WHY DIGITAL RESILIENCE IS KEY

Allan Dunlavy, Schillings

Success has always brought with it the need for greater vigilance where reputation is concerned. But today, prominent individuals, families and businesses face an even more diverse range of threats to their reputation than ever before - largely by virtue of our online first world.

Building and maintaining a reputation that is genuine, authentic and current and which is strong against attack is absolutely critical to continuing success and will be able to emerge intact from a crisis.

## The media evolution

Our move to the online sphere means that the media landscape - and therefore, the shaping of public opinion - has changed. Whereas before, reputation was largely influenced by the traditional printed press, now, the internet has taken over as the pre-eminent source for information. That means that today, reputation lives online.

Information is now more widely

available than ever, and the sheer volume of it means that it is consistently less rigorously checked and less accurate. Bad news and fake news travels fast, and the information that rises to the top isn't the most accurate or current - it's the most sensational and the most tantalizing. This information - regardless of how inaccurate or out of date it may be - is what people 'know' about you, your family and your business. And what people think they know determines their perceptions: what your online profile says about you or your business, therefore, has a huge impact on your reputation.

As a result, you need to understand how your online profile looks to the outside world, and ensure that it's fair, accurate and up to date. Your profile, and your business's profile, also needs to be resilient: when you have a resilient profile, you are better equipped to quickly respond and react to a crisis and protect your reputation. So how do you go about developing a resilient online reputation?

## Behind your digital footprint

Given your reputation is influenced by what information is available about you, it's vital to first ascertain the nature and extent of the information that is out there. If you search for your/your business's name online, you may see sources such as a bio on a company website, a Wikipedia page, a social media profile, or a mention in a news article - which may all appear on the first page of search results. However, whilst these first pages of search results are clearly important, this is merely the tip of the iceberg in terms of information about you online.

Think of Google search results as just the window dressing - a virtual business card. It is relatively straightforward to spot any inaccuracies in the search results or identify if the information is about the wrong person. The real substance lies behind the Google search results - in how they are used, recycled and relied upon - and by whom.



The substance in question here are data sets. These are comprised of the data from the various sources where your information might live – such as Wikipedia pages, websites, social media profiles, online biographies, compliance profiles, review websites. Whilst some of these are out of our control, they can all be managed to reflect our priorities and tweaked to ensure your profile is accurate to the outside world. These sources can be thought of as digital assets – and together, they create a digital portfolio.

Nowadays, every person and company has a digital portfolio made up of digital assets whether they actively seek to develop this or not. It is vital that every individual and business actively takes control of this digital portfolio, in the same way that you do with your financial portfolio and spend time to grow and invest in the assets within it.

This data is used by compliance databases, investigators conducting due diligence reports and deep dives, journalists, NGOs, regulators and governments – we have even seen Google search results and compliance databases relied on to compile Government sanction targets.

Even if the majority of casual observers don't stray beyond the first page of Google search results; the reality is it's the other people who are really looking and do go beyond this- that you need to ensure have accurate, up to date information. These are the individuals or businesses that are doing deep dive due diligence, compliance reports and fact finding to allow others to determine whether to invest with you, employ you, work with you or buy your product or business.

The challenge is, it is much harder to spot if there are inaccuracies or issues in these underlying data sets than on the first page of Google. It is also often difficult to track how the inaccuracy or error entered into the data, and where it came from. Errors in this data can have much larger and more significant consequences than inaccurate Google search results. It's obviously important to ensure that Google search results, your virtual business card, are accurate and up to date, but resolving these issues – behind the window dressing – is the real value of making your online reputation resilient.

## **A resilient online reputation**

It doesn't matter what business or sector you or your family are in – whether it is B2B or B2C – everyone from retailers to banks to investors can leverage better business opportunities by strategically managing their digital assets, and by extension, their online reputation. When done well, this type of strategic digital portfolio management creates significant opportunities and can play a key role in helping you achieve your personal, family and business objectives – whether those are financial targets, philanthropy goals, capital value growth, goals around audience and reach, recruitment and retention or ESG goals.

So where is a good place to start? A good digital portfolio resilience strategy should comprise of three steps. Firstly, it's important to understand what's out there: taking an initial inventory of digital assets, both for individuals and companies, allows you to understand where you are. The next step is working out where your goals are, and where you want to be: are you focused on recovering from a media crisis, or are you looking to take advantage of opportunities and build resilience for the future? Perhaps you're not in crisis mode, but interested in building a proactive strong, digital presence? Finally, you'll need a team of experts – legal and technical – to develop and execute an intelligence led strategy for building digital resilience.

The opportunities offered by our online world are numerous – but harnessing them is much more effective with a strong and resilient online profile. In a climate where everyone has a platform to air their views, and a proliferation of inaccurate information abounds, it's crucially important to take control of your digital profile – and protect your online reputation.

# SMEAR CAMPAIGNS

**CO-ORDINATED ACTION BY ACTIVIST  
INVESTORS, SPECULATORS,  
COMPETITORS AND OTHER RIVALS**

## **Problem**

We live in an era where negative comments online are a seemingly inevitable by-product of success.

So, when Schillings' client, the owner of a highly successful investment fund, started seeing the odd blog rant about him he initially thought nothing of it...

But when the nature of the posts began to follow a pattern of deliberate malevolence, Schillings were brought in to investigate.

## **What they did**

Working in parallel, we immediately initiated a three-pronged attack. Our intelligence team set about analysing the posts and finding correlations and connections between them - while simultaneously working out how to get

them taken down. Our cyber security team started digging behind the written words to the technology trail behind the messages which led to the culprit. And our legal team started preparing the complex, multi-jurisdictional legal proceedings that would eventually bring the perpetrator to justice.

## **The Result**

After uncovering a trail of highly sophisticated smear campaign activity that included phishing email attacks against an affiliate of our client, we successfully identified the perpetrator of the campaign. In addition, we helped the client put new procedures in place to protect against further attack. Most importantly, we brought those concerned to justice with no less than 28 suits of action in jurisdictions across Europe, Central and North America.





## BRAND AND REPUTATION, AN OFFSHORE TRUSTEE'S PERSPECTIVE

**Michael Giraud**, Head of Fiduciary Services, Standard Bank

Many of the worlds' most successful companies are instantly recognisable by their brands. Brands which have been built up and very carefully maintained, in some instances, for generations. They are not only recognisable, but they also provide customers and clients with instant peace of mind when the brand has a good reputation. Company brands and reputations are intrinsically linked and for a company to succeed it is important to have both a strong brand and a good reputation.

A company's brand and reputation hold such value that they can even be quantified and recorded on its balance sheet as goodwill; while the valuation may be subjective, it is based on numerous factors with brand and reputation featuring significantly. This ascribed value, coupled with the less measurable elements of a brand and reputation, makes safeguarding them paramount to a company's continued success.

"It takes a lifetime to build a good reputation, but you can lose it in a minute." Will Rogers.

This quote succinctly describes the delicate nature of reputations and why firms and jurisdictions spend such considerable time and resource on both brand and reputation, something which extends to both International Finance Centres (IFC) and professional trustees.

In the many years since I started working in the trust industry there has been considerable change in both the profile of professional trustees and of the IFCs in which they operate. Professional trustees have historically been based in a single jurisdiction and the industry was full of standalone providers. IFCs were known as offshore jurisdictions, few were properly regulated (if at all), and only the minority had legislation which required compliance with international laws and standards. The idea of global reporting and transparency was also considered to be whimsical at best. How times have changed!

Professional trustees have since evolved with most providers now based in multiple jurisdictions, both in IFCs and onshore jurisdictions. They arguably have ownership structures which place a greater emphasis on a company's short-term value and consequently its brand and reputation.

Being a professional trustee has never been more competitive, with modern legislation, regulation and best practice making the cost of entry and remaining competitive higher than ever. Falling foul of a regulator, having high-profile litigation, or any form of scandal, can be extremely costly to fix and is likely to damage a firm's ability to attract and retain the right type of clients and staff. The damage may well force a sale, delay a planned sale or damage future resale values. Depending on the shareholder's aspirations for the business, these consequences may be disastrous.

So, what about IFCs, are they as brand and reputation conscious as the professional trustees operating in their local trust industries? The short answer is yes. For many IFCs, there would be a devastating shock to their economy, given their reliance on the finance industry, if the local industry were to falter and potentially fail. With this in mind, it is important for them to protect their brand and their reputations as compliant and transparent jurisdictions. This means implementing legislation to ensure adherence to international laws and best practice standards, the robust and thorough regulation of professional service providers to guarantee compliance with the local legislation and international best practice standards.

Some IFCs, particularly when considering professional trustees, are doing better than others and, consequently, advisors and clients are starting to see a quite noticeable divide appear amongst the different IFCs, with clear lines being drawn between first tier and second tier jurisdictions (with a third tier also arguably already existing).

The leading IFCs have all established marketing bodies to promote their jurisdiction's trust industry. They are selective with regards to the firms that can operate in their jurisdiction, the persons who may be authorised to act as directors, and the types of business which is permitted to operate within the jurisdiction. Significant resources are allocated to

ensuring that international relations are maintained and that the IFC is able to adapt and evolve with international legislation and best practice. Regulators, industry professionals, and government officials work hard to ensure that the IFCs remain on the right side of the grey and black listings.

In summary, the importance of a brand and reputation cannot be underestimated and as the industry continues to evolve and become more competitive, I expect the resources allocated to the development and nurturing of a brand will in most likelihood increase. It is important to acknowledge that some professional trustees and IFCs are spending a disproportionate amount of resources on trying to rebuild their brand and reputation, perhaps trying to remedy past failings or trying to augment their brand and reputation in the market. In a number of these instances it is worth remembering that 'all that glitters is not gold' and past reputations have most likely been earned for a reason.

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# BLURRING THE LINES BETWEEN FACT AND FICTION (“FACTION”):

## Reputation Management in the Era of the TV Drama

Hannah Gornall, Charles Russell Speechlys

In recent months, there has been a surge in reputation management issues arising from the portrayal of individuals in TV dramas, particularly those programmes or films that purport to be based on contemporary events. Notably, there have been several high-profile examples of both public figures and private individuals asserting reputational damage in situations where they have been depicted in an unflattering light, without their consent being obtained beforehand.

One example is the *Lost King*, a film that tells the story of the discovery of Richard III's remains under a car park in 2012. Richard Taylor, former deputy registrar at Leicester University, has stated that the film is inaccurate, and that the writers have been reckless in their depiction of the academics involved. In particular, he makes reference to a scene where he is seen to mimic Richard III's disability, and that it has caused damage to his reputation. Mr Taylor is reportedly so upset by his portrayal that he has threatened to take legal action to get one scene cut and a note added to the credits that the character is not based on him.

Netflix has also come under fire for its portrayal of King Charles III in *The Crown*. The new series depicts a scene in which Charles lobbies the PM John Major in an attempt to force his mother's abdication. Sir John Major has condemned the scene as a “barrel-load of malicious nonsense”. A statement from his office confirmed that he had never been approached to fact-check any script material in *The Crown*. Friends of King Charles III have called the episode a “hurtful smear”, particularly in light of the recent passing of the Queen.

Channel 4 has recently announced that it will be broadcasting a new drama about the ‘Wagatha Christie’ trial between Coleen Rooney and Rebekah Vardy. The series will explore the aftermath of the now-infamous social media post by Rooney that accused Vardy of selling stories about her private life.

So, the question is, what legal recourse is available to an individual faced with a situation like this? The most obvious cause of action is to bring a claim for defamation against the media outlet involved. However, the merits of any such claim will depend on the circumstances, particularly the status of the claimant and the nature of the alleged defamatory statement made against them. The Defamation Act 2013 sets out the law on defamation, namely that “a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”. An individual may also consider bringing a privacy claim, the cause of action being misuse of private information.

The distinction between the rights of a private person and the privacy rights of a public figure is significant when considering a privacy and even a defamation claim. Individuals who become public figures do not give up all rights to privacy, but in the US they lose most – as Netflix will be well aware. Whilst the position in the UK is less draconian, it is still a factor considered by the Courts in establishing whether the individual has a reasonable expectation of privacy.

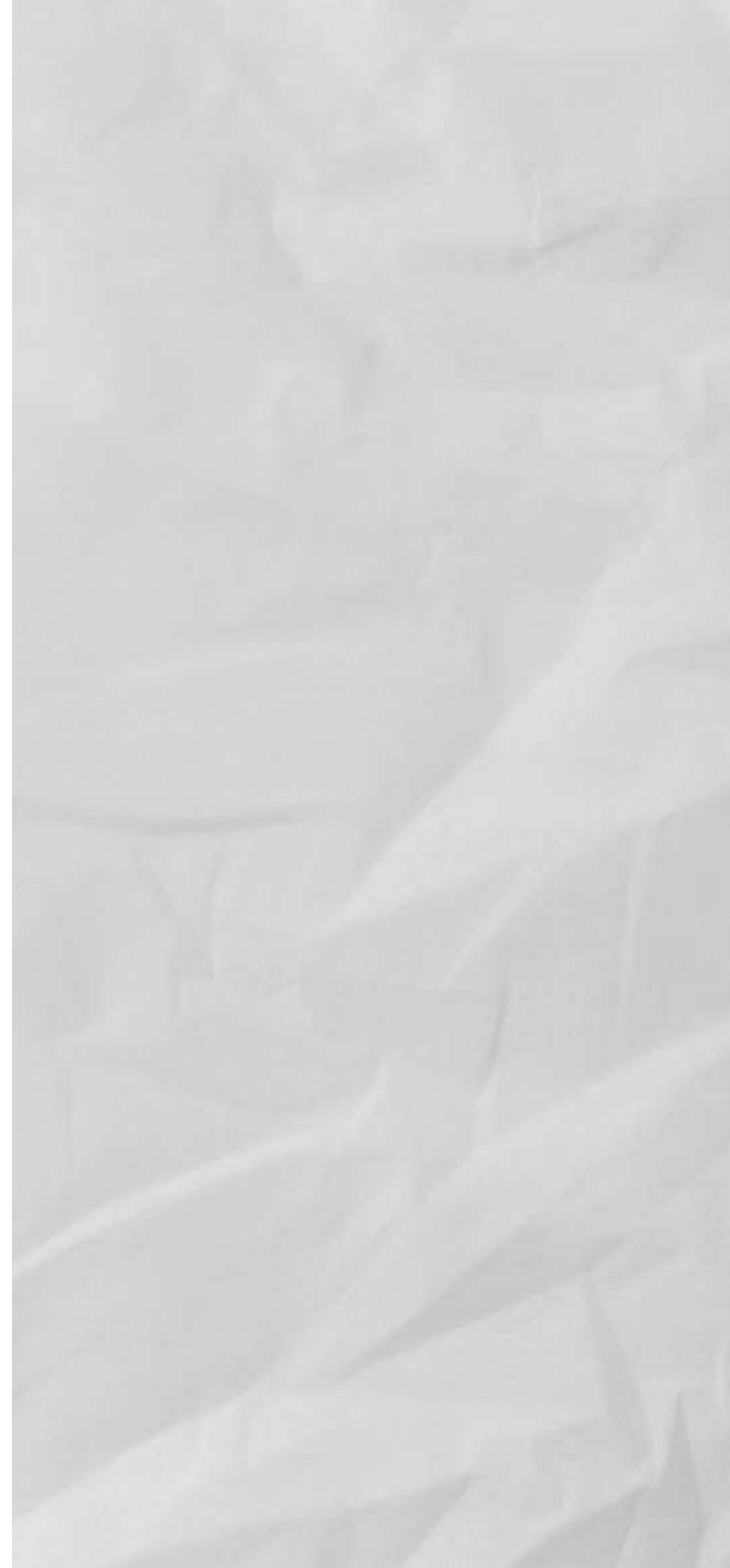
Further, a key stumbling block that is often encountered by claimants is when the information complained of is already in the public domain.

As the information about the alleged abdication was not, John Major may have recourse to bring a privacy claim in the UK courts. Interestingly, Charles III would be unable to, as he is not permitted to bring a claim in his own courts.

Turning back to defamation, at the heart of a successful claim is being able to demonstrate how the statement caused or is likely to cause serious harm to the individual concerned. Following the Supreme Court's judgment in the recent case of *Lachaux v Independent Print Ltd and Event Standard Ltd* [2019] UKSC 27, claimants now have the burden of proving serious harm to their reputation as a matter of fact in order to bring a successful claim. As a result, it is now necessary for claimants to consider to whom the statement was actually communicated, and the impact of that communication, in order to assess if serious harm to reputation was caused in fact. This is a high hurdle to surpass, and may pose challenges to individuals such as Richard Taylor in *The Lost King* in successfully bringing such an action.

It is also important to be alive to the potential defences available to parties involved in defamation cases. This includes the defence that the statement is true, or constitutes "honest opinion". In the 'Vardy v Rooney' courtroom depiction, Channel 4 has confirmed that the drama will use verbatim court transcripts to recreate the high court case. In this case, any claim for defamation (if brought by any parties involved) would be unlikely to defeat the truth and qualified privilege in reporting trials fairly and accurately defences.

But what happens when the line between fact and fiction is blurred? As far as *The Crown* is concerned, a spokeswoman has said "The Crown has always been presented as a drama based on historical events. Series five is a fictional dramatisation..." An individual's rights are less clear cut in this scenario, and it is likely that any prospect of bringing a successful claim for defamation will link back to the ability to demonstrate 'serious harm' has been caused to reputation. In the face of mounting public and political pressure, Netflix has discreetly added a disclaimer to its marketing for *The Crown* to make clear that it is a fictional dramatisation. How disclaimers such as these will defeat any action for reputational damage remains to be seen.



With the ever-increasing popularity of the TV drama, reputation management will remain a key concern for those that find themselves portrayed on the big screen. Individuals must be alive to the potential challenges in bringing a claim for defamation, and the prospects of success will depend on the individual circumstances involved. In the US, studios like to buy "Life Story Rights" but one doubts that the *Royals* offer these up. ■



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